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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

C. HUGH JONSON AND BONNIE L.
JONSON, HUSBAND AND WIFE,

Plaintiffs,

v.

FLAGSTAR BANK, FSB & MORTGAGE
REGISTRATION SYSTEMS, INC.
("MERS")

Defendants.

) Case No. 12-CV-00552RSL

) **SECOND AMENDED COMPLAINT FOR:**

-) **1. RESPA CLAIM**
) **2. TILA CLAIM**
) **3. IMPROPER CHAIN OF TITLE**
) **4. LACK OF STANDING**
) **5. VIOLATION OF FDCA**
) **6. IMPROPER TRANSFER**
) **7. LACK OF STANDING**
) **8. PREDATORY LENDING**
) **9. UNFAIR AND DECEPTIVE ACTS AND**
) **PRACTICES (UDAP)**

COMMON ALLEGATIONS

Plaintiffs have discovered new claims based on an updated securitization audit incorporating recent law, holdings and evidence submitted by Defendants in their Motion to Dismiss which necessitate the Plaintiffs filing a Second Amended Complaint to properly plead the below Claims to the Court.

I. PARTIES

1.

Plaintiffs are residents of Skagit County, Washington.

2.

1 – **SECOND AMENDED COMPLAINT VIOLATION OF TILA; RESPA; IMPROPER CHAIN OF TITLE; IMPROPER TRANSFER; UNFAIR AND DECEPTIVE ACTS AND PRACTICES (UDAP)**

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Defendant FLAGSTAR BANK, FSB (hereinafter “FLAGSTAR”) is a foreign business entity headquartered at 5151 Corporate Drive, Troy, MI 48098 with a registered agent (Corporation Service Company) located at 520 Pike Street, Seattle, Washington 98101.

3.

Defendant Mortgage Registration Systems, Inc., (hereinafter “MERS”) is a foreign business corporation headquartered at PO Box 2026 in the City of Flint, and State of Michigan.

II. JURISDICTION

4.

II. FEDERAL QUESTION JURISDICTION

5.1

The United States District Court for the Western District of Washington at Seattle has original jurisdiction over this action under 12 U.S.C. 2601-2617 & 15 U.S.C. 1641, 18 U.S.C. 1621 & 15 U.S.C. 1692(e), (federal question). As explained below, the action presents questions of federal law under Real Estate Settlement Procedures Act and Amendment to Truth in Lending Act pursuant to the The Helping Families Save Their Homes Act of 2009, and violations of the Unfair and Unlawful Practices Act at 18 U.S.C. 1621 and the Unlawful Debt Collection Practices Act at 15 U.S.C. 1692(e); .

5.2.

Supplemental Jurisdiction.

This Court has supplemental jurisdiction over Plaintiffs’ pendent state law claims pursuant to 28 U.S.C. § 1367. This Court has authority to grant declaratory relief pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*

II. VENUE

6.

Venue for all claims lies in the Western District of Washington at Seattle since Plaintiffs' claims arose from acts of the Defendants perpetrated therein or perpetrated on a Western Washington resident through the telephone or mail system.

IV. INTRODUCTION

7.

This Amendment is necessitated as a result of researching Defendants Motion to Dismiss allegations and Exhibits and Plaintiff hiring a private investigator / auditor and obtaining a new securitization loan audit several weeks ago to which the auditor has discovered a number of irregularities related to improper transfer, including but not limited to failures to give proper or timely disclosures, equity stripping scheme, MERS "Table-Funded" loan, Government Sponsored Entity loan pledging issue, and possible "forgery" of Note that Defendants submitted as an Exhibit to its Motion to Dismiss as discussed below.

8

Plaintiffs are the owners of certain real property commonly known as 6818 Gibraltar Pl, Anacortes, Washington 98221-8344, County of Skagit and specifically described as: Lot 4, "GIBRALTER HEIGHTS," as per plat recorded in Volume 10 of Plats, pages 52 and 53, records of Skagit County, Washington, APN #: 4213-000-004-0001.

9.

Plaintiff and Defendant executed a Deed of Trust dated December 29, 2009 and recorded on January 04, 2010, under Auditor's File No. 201001040075 between C. Hugh Jonson and Bonnie L. Jonson, as Grantor to Joan H. Anderson, EVP on behalf of Flagstar Bank, FSB, as Trustee, in favor of Mortgage Electronic Registration Systems, Inc., the beneficial interest and Flagstar Bank, FSB as "Lender". The Deed of Trust was assigned an 18-

1 digit MIN# 100052550284677431. Originated by MERS, the Mortgage Identification Number
 2 (MIN) is a unique 18-digit number used to track a mortgage loan throughout its life, from
 3 origination to securitization to pay off or foreclosure. The report on the MERS Registry,
 4 attached as Exhibit 01, stated that Flagstar is the current servicer of the Mortgage, and the
 5 MERS file is "inactive."

6
 7 10.

8 A search of this MIN# also revealed the "Servicer" as Flagstar and the "Investor" as
 9 Freddie Mac. A check of the Freddie Mac website confirmed this information and stated that
 10 Freddie Mac acquired the subject loan on January 13th, 2010 (See attached exhibit 02- Freddie
 11 Mac Capture.) This is roughly 2 years before MERS attempted to assign all interest in the
 12 Deed of Trust to FLAGSTAR on November 23, 2011. If the loan was indeed purchased by
 13 Freddie Mac, it was securitized by this "Gov't Sponsored Entity" (GSE.) A search in
 14 Bloomberg identified approximately 57 potential "Freddie Mac REMIC" trusts to which the
 15 subject loan could have been pledged around the time of origination (See Bloomberg attached
 16 as Exhibit 03.)
 17

18 11.

19 As mentioned above, MERS executed an Assignment of Deed of Trust in which the
 20 beneficial interest in the Deed of Trust was assigned to Flagstar Bank, FSB, under an
 21 Assignment document dated November 09, 2011 and recorded on November 23, 2011 under
 22 Auditor's File No. 201111230078 in the Records of Skagit County, attached as Exhibit 04.
 23 This document is executed by "Sharon Morgan" - Vice President of MERS. Morgan was
 24 actually the "Assistant Vice President - Assistant Manager for Foreclosure" for Flagstar Bank at
 25 the time of the assignment (See attached Exhibit 05 - Certification of Sharon Morgan.) The
 26

1 assignment is unusual by the fact that Flagstar's employee is attempting to assign the note and
2 DOT back to itself. Especially considering if Freddie Mac acquired the loan in January of
3 2010, then why is Flagstar executing the assignment in 2011? This would violate new TILA
4 amendment under The Helping Families Save Their Homes Act of 2009 as the new
5 owner/assignee must notify the borrower within 30 days after the loan is sold and Plaintiffs
6 allege they never received any said notice.
7

8
9 12.

10 When Plaintiff originally applied for the loan mentioned herein in the amount of
11 \$403,080, the Defendant Flagstar Bank's agent promised that Plaintiff was to receive an interest
12 rate between 3 and 4% in order to obtain a 30 year fixed loan with a monthly payment of \$1700
13 to \$1800 a month. Upon signing for the initial loan to purchase this property in early 2008,
14 Plaintiff was surprised after receiving his monthly mortgage statement that his monthly
15 payment was approx. \$3,200.80 a month.
16

17 13.

18 Plaintiff did not understand what he was signing at closing and did not completely
19 understand the rate, monthly, APR, whether the payments on the closing documents were
20 principal or interest or included taxes and interest and do not specifically remember seeing the
21 payment on the closing documents that Plaintiff saw on his payment mortgage coupon book a
22 month later. All Plaintiff remembers are the promises and representations of Defendant's loan
23 representative that Plaintiff would receive a monthly payment in the range of \$1700 to \$1800 a
24 month. At that point, to rescind the loan, Plaintiff was worried about sacrificing the original
25 earnest money and lose the ability to keep the Property.
26

14.

The loan itself has predatory characteristics. The borrowers were on a fixed income and the debt-to-income ratio for the loan itself exceeded 50%. The appraised value of the property according to the 1003 residential loan application has an unusual odd number of \$467,405.00. This type of odd value appears as though the numbers were being manipulated to make the borrower qualify. There is also a possibility that the borrowers were being targeted in an equity stripping scheme. Though it appears that Flagstar was trying to help the borrowers by decreasing their interest rate, it may have been done to cover up their prior predatory actions. This may somehow be construed as one event beginning when the Jonson's first came into contact with Flagstar. The potential fraud in the prior loan lead to their eventual demise.

15.

The Plaintiff is a disabled war veteran and only received a fixed income which he told and conveyed said financial information to Defendant. Defendant is in a far better position to advise and qualify Plaintiff as to his ability to repay the loan. In this instance Defendant and Defendant's agents made assertions and statements regarding a promised monthly payment for this loan transaction both as part of obtaining the original loan as well as the refinance of that original loan. Therefore, it is the position of the Plaintiff that Defendant intentionally concealed material information and all of the negative implications of the loan they were offering, and as a result, Plaintiffs face the potential of losing their home to the very entity and entities who placed Plaintiff in this position.

16.

The Plaintiff was a disabled Veteran who was receiving fixed payments from the Veteran's Administration and Defendant qualified Plaintiff for this loan supposedly based on Plaintiff's fixed

1 monthly income. The Plaintiff believes and alleges that the income used on the application was
 2 incorrect though. The income used on the application to qualify Plaintiff for the loan secured by
 3 the above Deed of Trust and Note resulted in an actual debt to income ratio of 51.33% which
 4 greatly exceeds normal underwriting practices. There was no determination of the ability of the
 5 Plaintiff to repay the loan and misrepresented the costs of the loan and the payment that
 6 Plaintiff would receive if Plaintiff used Defendant to fund this loan and to refinance it. Plaintiff
 7 did not understand all of the paperwork with regards to the final interest rate and if the payment
 8 listed on the closing documents was the real or true payment or if it included taxes and
 9 insurance or if the payment on the statements would appear lower. Defendant, neither
 10 explained the workings of the entire mortgage loan transaction, amortization of the loan, the
 11 annual percentage rate, points charged, the actual payment per month or the true cost of the
 12 finance charges.

14 17.

15 It does not appear that the borrower's debt ratios were taken into consideration. Failure to
 16 do so was a lack of due diligence on the part of the lender regarding underwriting standards and the
 17 ability to repay the loan, suggestive that they knew the income was not adequate to approve the
 18 loan, had the lender considered debt ratio, the lender would have had to decline the loan (this could
 19 be considered breach of the lender's contractual duty to conduct the transaction in good faith and
 20 through fair dealing; gross negligence as discussed and alleged below. All of these factors make
 21 this loan predatory and unconscionable.

23 18.

24 The purpose of entering into the above-described mortgage loan transactions was for
 25 Plaintiffs to eventually own the Property and engage in a scheme of equity stripping. That
 26

purpose was knowingly and intentionally thwarted and indeed made impossible by Defendants' actions alleged herein.

19.

Once again, Defendant, Flagstar Bank promised Plaintiff that his payment would be reduced to \$1700 a month and as a result Plaintiff applied for this refinance transaction that occurred in December of 2009 to obtain the reduced payment. Instead Defendant only reduced the monthly payment to 2384.37. This is a difference of \$684.37 a month and since this was the payment since January of 2010, this is a detrimental loss or overpayment that has affected Plaintiff, not including late fees, extra interest on the late amounts and Attorney Fees being added to the new loan balance and the default amount that is required to reinstate this loan as a result of Plaintiff's eventual and foreseeable default in this case and loss of credit.

20.

Plaintiff has relied on Defendant's promises to its detriment and Defendant has placed Plaintiff in harm's way as a result of certain misrepresentations and Plaintiff's reliance on said statements to its detriment.

21.

Defendant Flagstar Bank, FSB executed an Appointment of Successor Trustee in naming Northwest Trustee Services as Successor Trustee.

22.

Pursuant to the Notice of Sale dated November 30, 2011, Defendant Flagstar Bank by and through their agent Northwest Trustee Service acting as Successor Trustee caused said notice to be recorded on December 08, 2011 at Auditor's number 201112080056.

23.

1 The Trustee's Notice of Sale fixed the Sale date as March 09, 2012. That date has since
2 been postponed.

3 24.

4 On November 30, 2011, Flagstar Bank, FSB executed, a Trustee's Notice of Sale. The
5 Trustee's Notice of Sale recites the following: "in favor of Mortgage Registration Systems,
6 Inc. "MERS" as nominee for Flagstar Bank, FSB, its successors and assigns, as Beneficiary,
7 the beneficial interest in which was assigned by Mortgage Electronic Registration Systems, Inc.
8 "MERS" as nominee for Flagstar Bank, FSB, its successors and assigns to Flagstar Bank, FSB,
9 under an Assignment/Successive Assignments recorded under Auditor's File No.
10 201111230078."

11 25.

12 Flagstar submits a color copy of the subject Note, purporting it to be a copy of the
13 "original," as an exhibit to its motion for summary judgment. A declaration by Dr. James
14 Kelley indicates that this Note is a forgery attached hereto as Exhibit 06. Dr. Kelley examined
15 the questioned document that contains a purported color copy of the original Note with special
16 attention to page 54 that contains the questioned signatures of Bonnie Louise Jonson and
17 Clarence Hugh Jonson. He compared said signature with original signatures from Mr. and Mrs.
18 Jonson. He also extracted the file metadata that contains information about the creation and
19 modification of the document as well as the name of the document creator - "schaj". Pertaining
20 to the alleged signatures of Clarence Hugh Jonson and Bonnie Louise Jonson on the Note
21 document attached to page 54 of the motion to dismiss, this Examiner's professional opinion is
22 that said document is not a copy made directly from the original Note; and the signatures
23
24
25
26

1 thereon were systematically fabricated to make them appear as direct copies of the "blue Ink"
2 signature of the original Note. The examiners opinion is that the signatures are forgeries.

3
4 26.

5 There is a "blank endorsement" on a separate page of Defense exhibit of the so-called
6 original note, attached as Exhibit 07. If this was placed on the back page of the so-called
7 original note, it is suspicious. Endorsements are to be placed on the signature page of the note if
8 there is room. There appears to have been plenty of space to affix the endorsement on the
9 signature page. This adds credence to the document being altered. One of the signatures on the
10 endorsement on the Note is that of "John Marecki - Trust Vice President." This is a clue that the
11 subject loan may have been securitized internally by Flagstar in addition to Flagstar's selling
12 the loan to Freddie Mac.

13
14 27.

15 If above allegations are indeed true, it is apparent that Defendants do not have the
16 original Note and do not have proper authority to even have initiated this nonjudicial
17 foreclosure process in the first place and in the second place, Defendants have committed
18 perjury to this court and as a result ask the court to suspend this foreclosure action indefinitely
19 until we can have a hearing on the note and the signatures affixed thereto and consider
20 enjoining this foreclosure sale indefinitely and determining the claims relating to the
21 authenticity of the Note attached to the motion to dismiss and determine if the Defendants have
22 the original Note in their possession. It appears that Defendants have intentionally and falsely
23 claim to be the party entitled to monies due under terms of the Note. That this manufactured
24 document is a fabrication intended to create the illusion of a valid transfer of the promissory
25 note and support the assertion of standing in this particular case. It appears that this
26

1 manufactured evidence is being used in this case to deceive the court and save the cost to the
2 lender and obtain a motion to dismiss in this case with relative ease.

3
4 28.

5 Plaintiff thereafter initiated the instant case seeking Declaratory Judgment invalidating
6 the foregoing foreclosure sale. Plaintiff initiated the instant case seeking Declaratory Judgment
7 invalidating the foregoing foreclosure sale on the grounds that there was no recorded
8 assignment to any lawful and proper beneficiary prior to the initiation of the non-judicial
9 foreclosure as required by RCW 61.24.030 along with a number of other failures to comply
10 with the RCW 61.24.

11
12 29.

13 At all times material hereto, Defendants are claiming a right to foreclosure non-
14 judicially as a result of the power of sale clause contained in the DOT, which is a contractual
15 agreement.

16
17 30.

18 The DOT specifically conditions Defendants' exercise of the power of sale contained in
19 the DOT on Defendants' compliance with applicable law. The DOT also specifically requires
20 that the Lender give notice to the Borrower of the right to file suit. This notice was never filed.

21
22 31.

23 The power of sale is a contractual remedy, the exercise of which is limited and
24 conditioned by statute.

25
26 32.

Defendants' actions in pursuing a non-judicial foreclosure wrongfully invokes the
power of sale because Defendants have failed to comply with the preconditions necessary to

1 invoke the power of sale,

2 33.

3 Defendants' failure to abide by the non-judicial foreclosure statutes constitutes a breach
4 of contract because Defendants have sought a remedy under the DOT to which they are not
5 entitled because Defendants have sought to non-judicially foreclose without meeting the
6 requirements set forth in RCW 61.24.

7 34.

8 As the DOT specifically provides for attorney fees, in the event that Defendants prevail
9 upon the exercise of the power of sale, Plaintiff is also entitled to its attorney fees in the event
10 Defendants' exercise of the power of sale is deemed wrongful.

11 35.

12 As Defendants' remedy is based purely on a contract, and as the contract at issue
13 specifically provides that attorney fees and costs incurred to enforce the provisions of the
14 contract, Plaintiff is entitled to an award of its fees if it prevails in voiding, invalidating, or
15 setting aside the remedy chosen by Defendants – specifically, Defendants' election to invoke
16 the power of sale contained in the DOT. In the event Defendants' invocation of the power of
17 sale is deemed wrongful, Plaintiff's claim clearly falls within Section 26 of the Deed of Trust
18 because Defendants' claim of the right to foreclose non-judicially arises purely based on a
19 contract that specifically provides for an award of attorney fees.

20
21
22
23
24
25
26
FIRST CLAIM FOR RELIEF
DECLARATORY JUDGMENT - INVALIDATING FORECLOSURE SALE
IMPROPER CHAIN OF TITLE

36.

Plaintiffs re-allege and incorporate by reference all preceding paragraphs as though

1 fully set forth herein.

2 37.

3 While the Deed of Trust lists MERS as the Beneficiary in Section E of the Definitions,
4 the Deed of Trust is equally clear that Flagstar Bank, FSB is the Lender.

5 38.

6 Flagstar is the party who loaned the money, FLAGSTAR is the party to whom the
7 obligation is owed and FLAGSTAR is the party for whose benefit the Deed of Trust was given.

8 39.

9 The "Freddie Mac Capture" attached as Exhibit 02 shows the subject loan was acquired
10 by Freddie Mac on January 13, 2010. There has been one assignment of the DOT recorded in
11 the county land records (attached) whereby MERS attempts to assign the Note and DOT back
12 to Flagstar Bank, FSB on January 09, 2011. This document is executed by "Sharon Morgan" -
13 Vice President of MERS. Morgan was actually the "Assistant Vice President - Assistant
14 Manager for Foreclosure" for Flagstar Bank at the time of the assignment (See attached Exhibit
15 05 - Certification of Sharon Morgan.)

16 40.

17 The assignment is unusual by the fact that Flagstar's employee is attempting to assign
18 the note and DOT back to itself. Most importantly, if Freddie Mac acquired the loan in January
19 of 2010, then why is Flagstar executing the assignment in 2011?

20 41.

21 If the loan was indeed purchased by Freddie Mac, it was securitized by this "Gov't
22 Sponsored Entity" (GSE.) A search in Bloomberg identified approximately 57 potential
23 "Freddie Mac REMIC" trusts to which the subject loan could have been pledged around the
24 time of origination (Bloomberg attached as Exhibit 03.)

25 42.

26 As set forth above, FLAGSTAR'S first recorded interest in the property is set forth in

1 the Assignment of Deed of Trust dated November 09, 2011, nearly Two (2) years after the date
2 of the original Deed of Trust.

3 43.

4 There are no recorded transfers between the initial Deed of Trust dated December 29,
5 2009 and the subsequent assignment in November of 2011.

6 44.

7 MERS is a system which facilitates the rapid transfer of unrecorded assignments of
8 Obligations and Trust Deeds between MERS members. Said assignments regularly occur
9 without any recordation in the County in which the property is situated. MERS systematic
10 failure to record assignments between MERS members is in fact, a feature of the system, not a
11 bug.

12 45.

13 MERS has never had any beneficial interest in the Deed of Trust.

14 46.

15 FLAGSTAR has the only recorded interest in the property, yet its interest was not
16 recorded until nearly Two (2) years after the original Deed of Trust.

17 47.

18 There is a gap of nearly Two (2) years in the Chain of Title during which the Deed of
19 Trust was in the sole possession and title of MERS but unbeknownst to Plaintiff it appears that
20 MERS saw the need to execute an Assignment of Deed of Trust transferring the recorded
21 beneficial interest to FLAGSTAR as late as November of 2011.

22 48.

23 A trustee may conduct a non-judicial foreclosure only if the Trust Deed and any
24 assignments thereof have been recorded in the deed records of the county in which the property
25 sits.

26 49.

There exists a justiciable controversy between Plaintiff and Defendants as to whether

1 Defendant violated RCW 61.24.030 by conducting a non-judicial foreclosure and failing to
2 record all of the assignments of the Deed of Trust.

3 50.

4 The evidence of Defendants' failures to properly record all assignments is also strongly
5 indicated by the Assignment of Deed of Trust by which FLAGSTAR purported to obtain the
6 right to foreclose after the loan was sold to Freddie Mac. Additionally, there is a "blank
7 endorsement" on a separate page of Defense exhibit of the so-called original note, attached as
8 Exhibit 07. One of the signatures on the endorsement on the Note is that of "John Marecki -
9 Trust Vice President." This is a clue that the subject loan may have been securitized internally
10 by Flagstar in addition to Flagstar's selling the loan to Freddie Mac.

11 51.

12 Defendants' failure to properly record all assignments of the Deed of Trust violates
13 RCW 61.24.030 and should result in Declaratory Judgment voiding and invalidating any
14 trustee's sale of this Property and forcing Defendants' to immediately dismiss the current
15 nonjudicial foreclosure action being contested in this case.

16 V. PLAINTIFF'S SECOND CLAIM FOR RELIEF
17 RESPA VIOLATION 12 U.S.C. 2601-2617, 24 C.F.R. § 3500.21(d)(ii)(2)(A)

18 52.

19 Plaintiffs re-allege and incorporate by reference all preceding paragraphs as though
20 fully set forth herein.

21 53.

22 There is one assignment of the DOT, executed on November 09, 2011, recorded in the
23 Skagit County land records under Auditor's File No. 201111230078. This Assignment transfers
24 the interest in the real property from MERS, as beneficiary to Flagstar Bank, FSB. Plaintiff
25 alleges they never received notice of said transfer.
26

54.

Additionally, Freddie Mac acquired the loan on "January 13th, 2010" according to the attached Exhibit 02 - "Freddie Mac Capture." It is not clear how MERS could transfer title as beneficiary to OneWest Bank, F.S.B. if Freddie Mac was the owner and why would MERS receive value and not Freddie Mac.

55.

Defendants have engaged in the following acts which constitute violations of the Real Estate Settlement Procedures Act:

- A. Failure to inform Borrower of intention to transfer the servicing of the loan and the actual transfer within fifteen (15) days before the effective date of the transfer.
- B. Failure to disclose all affiliated business arrangements.

56.

As a direct result of Defendant FLAGSTAR's actions in connection with the loan, Plaintiff has been damaged in an amount to be proven at trial, but not less than \$10,000.00 plus statutory fees.

57.

Plaintiff should be awarded its reasonable attorney fees incurred in bringing this claim and defending against the foreclosure.

PLAINTIFF'S THIRD CLAIM FOR RELIEF
TILA 15 U.S.C. 1641, Section 404

58.

Plaintiff re-alleges and incorporates by reference all preceding paragraphs as though fully set forth herein.

59.

1 The Helping Families Save Their Homes Act of 2009 included a new provision in TILA
 2 which requires that whenever ownership of a mortgage loan securing a consumer's principal
 3 dwelling is transferred, the creditor that is the new owner or assignee must notify the borrower
 4 in writing, within 30 days after the loan is sold or assigned, of the following information:

- 5 (a) the new creditor's identity, address, and telephone number;
- 6 (b) the date of transfer;
- 7 (c) location where the transfer is recorded;
- 8 (d) how the borrower may reach an agent or party with authority to act on behalf of the
 9 new creditor; and
- 10 (e) any other relevant information regarding the new owner.

11
 12 60.

13 The new law applies to any transfers made after the Act's effective date, which was
 14 May 20, 2009. The assignment of in this case occurred in November of 2011. Plaintiff alleges
 15 He never received any such notification that the ownership of their loan was transferred.

16
 17 61.

18 The TILA penalty an amount "equal to twice the amount of the finance charge imposed,
 19 but not less than \$100 nor more than \$1,000 [15 U.S.C. Section 1640(2)(a)]. Additionally, the
 20 borrower should be able to recover attorney's fee under TILA, if the borrower prevails on his
 21 or her TILA claim.

22
 23 62.

24 Plaintiff should be awarded its reasonable attorney fees incurred in bringing this TILA
 25 claim.

26
 PLAINTIFF'S FOURTH CLAIM FOR RELIEF

UNFAIR AND UNLAWFUL PRACTICES ACT
VIOLATIONS OF 18 U.S.C. 1621

63.

Plaintiffs re-allege and incorporate by reference all preceding paragraphs as though fully set forth herein.

64.

Under 18 U.S.C. 1621

Whoever-

(1) having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed, is true, willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true; or in any declaration, certificate, verification, or statement under penalty of perjury as permitted under section 1746 of title 28, United States Code, willfully subscribes as true any material matter which he does not believe to be true; is guilty of perjury and shall, except as otherwise expressly provided by law, be fined under this title or imprisoned not more than five years, or both. This section is applicable whether the statement or subscription is made within or without the United States.

That Defendants, through its agent, filed a declaration under penalty of perjury in the U.S. Federal District Court representing that this promissory note was an original and therefore it was entitled to enforce the terms of said promissory note in order to induce the court rule in its favor on its motion to dismiss pleading and incorporated said Note on page 11 of its motion to dismiss and attached said Note as Exhibit D.

This pleading was signed by Attorney Fred Burnside as agent and counsel for Defendants Flagstar Bank, FSB and Mortgage Electronic Registration Systems.

65.

That the "Assignment of Deed of Trust" filed with the King County County Recorder's

1 Office on January 04, 2010, purports to represent that a transfer of the Promissory Note
2 occurred from MERS to Flagstar on January 04, 2010. This does not appear possible.

3 That the originally signed Promissory Note is a fabricated document used by
4 Defendants in this motion to dismiss hearing, so as to create the illusion that Flagstar holds the
5 original promissory note and therefore is entitled to enforce the terms of said Note.

6
7 66.

8 A declaration by Dr. James Kelley indicates that this Note is a forgery attached hereto
9 as Exhibit 05. Dr. Kelley examined the questioned document that contains a purported color
10 copy of the original Note with special attention to page 54 that contains the questioned
11 signatures of Bonnie Louise Jonson and Clarence Hugh Jonson. He compared said signature
12 with original signatures from Mr. and Mrs. Jonson. He also extracted the file metadata that
13 contains information about the creation and modification of the document as well as the name
14 of the document creator -“schaj”. Pertaining to the alleged signatures of Clarence Hugh Jonson
15 and Bonnie Louise Jonson on the Note document attached to page 54 of the motion to dismiss,
16 this Examiner’s professional opinion is that said document is not a copy made directly from the
17 original Note; and the signatures thereon were systematically fabricated to make them appear
18 as direct copies of the “blue Ink” signature of the original Note. The examiners opinion is that
19 the signatures are forgeries.

20
21 67.

22 Therefore, this Note that Defendants proffered to the Court as an original is actually a
23 forgery and as such should be held against Defendants so as to prove that if Defendants would
24 go to such an extent to produce a forged document in the court record then said original
25 document simply does not exist. If this is the case, Defendants cannot move forward with said
26

1 nonjudicial foreclosure and must dismiss this case.

2 68.

3 Submitting a forged promissory note along with a motion to dismiss is a prime
4 example of the deceptive business practice being utilized by Lenders in these type of
5 cases and Defendants should be penalized for engaging in such conduct.

6 69.

7 That Defendant's business practice creates TWO distinctly false representations
8 of the historical "chain of title" of the Deed of Trust, neither of which is consistent with
9 the Pooling and Servicing Agreement. We cannot even be sure who is the actual legal
10 owner of said Note, when said Note is supposed to follow the Deed of Trust.

11 70.

12 That was false and inaccurate and manufactured for the purpose of deceiving this
13 District Court into accepting Defendants version of the chain of title transfers without
14 regard to the truth as well as the current owner of said Note.

15 A debt collector violates 15 USC 1692f bv

16 (6) Taking or threatening to take any nonjudicial action to effect dispossession or disablement
17 of property if:

18 (A) there is no present right to possession of the property claimed as collateral through
19 an enforceable security interest;

20 (B) there is no present intention to take possession of the property; or

21 (C) the property is exempt by law from such dispossession or disablement.

22 As stated above, Defendants, individually and through its authorized representatives,
23 has caused a false and fabricated promissory note along with its motion to dismiss made under
24 penalty of perjury to be filed with this United States District Court for the Western District of
25 Washington at Seattle.

PLAINTIFF'S FIFTH CLAIM FOR RELIEF
FALSE/MISLEADING REPRESENTATIONS - UNLAWFUL DEBT COLLECTION PRACTICES ACT
VIOLATIONS OF 15 U.S.C. 1692(e)

71.

15 U.S.C 1692e. False or misleading representations states the following:

A debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

- (1) The false representation or implication that the debt collector is vouched for, bonded by, or affiliated with the United States or any State, including the use of any badge, uniform, or facsimile thereof.
- (2) The false representation of-
 - (A) the character, amount, or legal status of any debt; or
 - (B) any services rendered or compensation which may be lawfully received by any debt collector for the collection of a debt.
- (3) The false representation or implication that any individual is an attorney or that any communication is from an attorney.
- (4) The representation or implication that nonpayment of any debt will result in the arrest or imprisonment of any person or the seizure, garnishment, attachment, or sale of any property or wages of any person unless such action is lawful and the debt collector or creditor intends to take such action.
- (5) The threat to take any action that cannot legally be taken or that is not intended to be taken.
- (6) The false representation or implication that a sale, referral, or other transfer of any interest in a debt shall cause the consumer to-
 - (A) lose any claim or defense to payment of the debt; or
 - (B) become subject to any practice prohibited by this subchapter.
- (7) The false representation or implication that the consumer committed any crime or other conduct in order to disgrace the consumer

72.

That Defendants conduct rises to the level of "un lawful" under the perjury statute.

73.

That Defendants conduct in this case rises to the level of "fraudulent" under the plain definition of the word and is highly likely to mislead the public including this

1 court.

2
3 74.

4 That Defendants have presented evidence and assertions as to the chain of title
5 transfers of said promissory note in this District Court matter, that Defendants either
6 knows to be false or where Defendants have no reason to believe that these assertions
7 contained in these documents are true.

8 75.

9 The Defendants have engaged in this deceptive business practice for its own
10 financial benefit at the expense of Plaintiffs legal position, its own investors,
11 competitors and with complete disdain for the Federal District Court system.

12 76.

13 Rather than satisfy its burden of proof to establish standing, Defendants have
14 determined that manufacturing evidence to accomplish its goals and chill opposition
15 is a more cost effective business practice.

16 77.

17 As stated, the process of proving up standing for a Mortgage Backed /Government
18 Sponsored Security Trust typically involves proving three true sales of a given promissory note
19 (From Originator to Sponsor to Depositor to the Trust). Defendants utilize this deceptive
20 business practice to avoid the costs associated with this proving standing.

21 78.

22 To Defendants, the ends justify the means: Whether there is a lack of ANY
23 evidence of a Government Sponsored Trust standing OR where Defendants view the
24 cost of proving up THREE promissory note transfers is too high. Defendants
25
26

1 efficiently avoid the challenge by utilizing the business practice of manufacturing
2 evidence.
3

4 79.

5 This use of the fabricated evidence has a chilling effect on borrowers and their
6 attorneys. Said business practice discourages Plaintiff counsel from bringing other good faith
7 arguments based on the transfer of the Deed of Trust and valid securitization claims or from
8 questioning the validity of Defendants false claims based on standing,
9

10 80.

11 That the fabricated loan documents and possibly other documents used by Defendants,
12 while persuasive, are blatant misrepresentations of the true chain of title transfer of Plaintiff's
13 promissory note and affront to the integrity of the legal system.
14

15 81.

16 Plaintiffs are further informed and believe and allege thereon that each of these
17 defendants' business practices are likely to continue to deceive the public and are likely
18 to continue to induce the Courts including other Plaintiffs and Plaintiffs counsel into
19 relying to their detriment on false representations made in loan and title documents and
20 affidavits offered in similar District Court matters.
21

22 82.

23 Defendants' fraudulent, deceptive, unfair, and other wrongful conduct as
24 herein alleged, said Defendants have violated Revised Code of Washington 19.86.093 by
25 consummating an unlawful, unfair, and fraudulent business practice, designed to deprive
26 Plaintiff of their home, equity, as well as their past and future investment as indicated above.

83.

As a proximate result of defendants' conduct, plaintiffs, each of them, was injured financially and/or to her property rights. Said conduct as set forth herein resulted in statutory, general and special damages. Plaintiffs are further entitled to injunctive relief and any other equitable relief that the court deems appropriate.

PLAINTIFF'S SIXTH CLAIM FOR RELIEF
PROMISSORY ESTOPPEL & DETRIMENTAL RELIANCE

84.

Plaintiffs re-allege and incorporate by reference all preceding paragraphs as though fully set forth herein.

85.

Defendant Flagstar Bank promised Plaintiff that Plaintiff would receive an interest rate of approximately 3% on a loan with a \$1700 a month payment and Defendant Flagstar Bank repeatedly promised a given rate and a given payment for this loan in the amount of \$403,080. Said promises were in consideration for Plaintiff's submission of documentation and Plaintiff's agreement to make future payments at said promised rate and promised amount. Otherwise Plaintiff would not have used Defendant to fund this particular loan.

86.

In addition, Plaintiff alleges that FLAGSTAR promised him that he could refinance and get a much more affordable loan based on the promises set forth above. In addition, FLAGSTAR promised Plaintiff that if Plaintiff submitted certain information to Defendants that Defendants would review Plaintiff's refinance paperwork and put Plaintiff in a better loan because of the high interest rate and loan payment situation. Mr. Anderson promised to Plaintiff that if Plaintiff refinanced with Defendant, that Defendant would be able to obtain him

1 a loan with a monthly payment of \$1700, no questions asked. Said promises were in
 2 consideration for Plaintiff's submission of documentation and Plaintiff's agreement to pay
 3 more closing/title costs and more finance and interest fees to Defendant for the refinance based
 4 on their promises to obtain a loan with a given rate and monthly payment for Plaintiff. Plaintiff
 5 is not a professional loan consultant or broker or title officer. Plaintiff simply did not fully
 6 understand the nature of all the documentation at closing for the original or refinance loan and
 7 was shocked both times after closing of both loan transactions. Plaintiff was shocked because
 8 despite all the promises that Defendant made to Plaintiff regarding a given rate and a given
 9 monthly payment, the actual payment amount that was delivered to him after closing was
 10 nowhere close to the \$1700 amount that was originally promised to Plaintiff. Defendant
 11 instead put Plaintiff in a harmful situation whereby Plaintiff had no choice but to accept the
 12 harmful loan terms.
 13

14 87.

15 Plaintiff relied on Defendant Flagstar Bank's promises set forth herein. If Plaintiff had
 16 known that Defendant was going to put him in a loan with a monthly payment of 3200.80 a
 17 month, Plaintiff would never agreed to pay fees, costs and undertake a loan at that monthly
 18 payment and at that interest rate. After Plaintiff spent months and months complaining and
 19 explaining the issue and mistake to Defendant, Plaintiff believed this time that Mr. Anderson
 20 and Flagstar Bank would fix the issue/mistake and put him into the loan he originally thought
 21 he was getting from Defendant. Once again, Plaintiff paid fees, costs and extra interest to
 22 obtain a refinance of the original loan from Defendant and once again it did not come down
 23 anywhere close to the agreed upon new monthly payment. At that point, Plaintiff had already
 24
 25
 26

1 paid fees, closing costs and used his resources for the refinance and was thus impeded from
2 finding another lender after the refinance to obtain another loan.

3 88.

4 Plaintiff was reasonable in relying on Defendant Flagstar Bank's promises set forth
5 herein because as the holder of the mortgage on the subject property, Defendant Flagstar Bank
6 is in an absolute position to oversee and control all such matters. Flagstar has an understanding
7 of what will be submitted to title and what will be the ultimate payment. In this case, Plaintiff
8 had no idea that the payment was going to be that high, not at either of the closings. Plaintiff
9 relied to his detriment on the statements of the Defendant that his payment would be around
10 \$1700 after the funding of both of these loan transactions.
11

12 89.

13 Defendant Flagstar Bank did not perform as promised and has damaged Plaintiff by
14 forcing the sale of the home, unlawfully and improperly representing the payment that Plaintiff
15 was supposed to obtain after both closings of aforesaid loan transactions. Plaintiff allegedly
16 did not have certain extra income or credit, when Plaintiff is a disabled veteran with a fixed
17 income so the income and credit would never had changed and there should never had been
18 such a wide discrepancy between the payment that Defendant promised to Plaintiff and the
19 payment that Plaintiff actually received after the funding of these loan transactions.
20

21 90.

22 Plaintiff reasonably relied on multiple promises made by Defendant Flagstar Bank and
23 has been substantially damaged by Defendant Flagstar Bank in that Defendant is currently
24 foreclosing on the subject property on July 06, 2012, as a result of Plaintiff's reliance on
25 Defendant's promise to obtain a certain monthly payment and interest rate for Plaintiff and
26

1 instead supplying Plaintiff with a payment that Plaintiff could not afford. The difference
 2 between the original loan amount of \$3200.80 and the promised payment of \$1700 is \$1500.80
 3 a month overpayment and he paid this for a year for loss of \$18,009.60 and then the
 4 overpayment on the second part of the loan is \$1134.73 a month since January of 2010, for 30
 5 months for a loss of \$34,041.90. The Plaintiff has overpaid as a result of the reliance on
 6 Defendants' statements roughly \$52,051.50. Additionally, Plaintiff was denied the opportunity
 7 to preserve his credit, reinstate the loan because of the large loan fees, late fees, attorney fees
 8 and interest that are presently accumulating under the amortization schedule of this loan.
 9

10 VI. PLAINTIFF'S SEVENTH CLAIM FOR RELIEF
 11 LACK OF STANDING

12 91.

13 Plaintiff re-alleges and incorporates by reference all proceeding paragraphs fully set
 14 forth herein.

15 92.

16 An actual controversy has arisen and now exists between Defendants and Plaintiffs
 17 regarding their respective rights and duties, in that Plaintiffs contend that Defendants do not
 18 have the right to foreclose on the home because defendants have failed to perfect any valid
 19 security interest in the home. Thus, the reported power of sale by the Defendants no longer
 20 applies. Plaintiffs further contend the defendants and each of them, do not have the right to
 21 foreclose on the home because said Defendants did not properly comply with the terms with the
 22 Defendants own transfer, endorsement and securitization requirements and falsely or
 23 fraudulently prepared documents required for defendants to foreclose as a calculated and
 24 fraudulent business practice.
 25
 26

1 93.

2 Plaintiffs are informed and believed that and there upon allege that the only individual
3 who has standing to foreclose is the holder of the note because only the holder has a beneficial
4 interest.

5 94.

6 Plaintiffs requests that this court find that the reported power of sale contained in the note and
7 deed of trust has no force and effect at this time, because defendants actions in processing,
8 handling and attempting foreclosure of this loan involve numerous fraudulent, false, deceptive
9 and misleading practices, including, but not limited to, violations of state and federal laws
10 designed to protect borrowers, which has directly caused plaintiffs to be at an equitable
11 disadvantage to the defendants. Plaintiffs further request that the title to their home remain in
12 their name and said deed of trust remaining in beneficiary's name, during the pendency of this
13 litigation and deem that any attempted sale of the home is unlawful and void.

14 WHEREFORE, Plaintiff prays for relief as set forth below.

15
16
17 **PLAINITFF'S EIGHTH CLAIM FOR RELIEF**
18 **CONTRACTUAL BREACH OF COVENANT OF GOOD FAITH & FAIR DEALING**

19 95.

20 Plaintiffs re-allege and incorporate by reference all preceding paragraphs as though
21 fully set forth herein.

22 96.

23 Every contract imposes upon each party a duty of good faith and fair dealing in its
24 performance and its enforcement. This implied covenant of good faith and fair dealing requires
25 that no party will do anything that will have the effect of impairing, destroying, or injuring the
26 rights of the other party to receive the benefits of their agreement. The covenant implies that in

1 all contracts each party will do all things reasonably contemplated by the terms of the contract
 2 to accomplish its purpose. This covenant protects the benefits of the contract that the parties
 3 reasonably contemplated when they entered into the agreement.

4 97.

5 The terms of the Loan imposed upon FLAGSTARs a duty of good faith and fair dealing
 6 in this matter.

8 98.

9 The loan itself has predatory characteristics. The borrowers were on a fixed income and
 10 the debt-to-income ratio for the loan itself exceeded 50%. The appraised value of the property
 11 according to the 1003 residential loan application has an unusual odd number of \$467,405.00.
 12 This type of odd value appears as though the numbers were being manipulated to make the
 13 borrower qualify. There is also a possibility that the borrowers were being targeted in an equity
 14 stripping scheme. Though it appears that Flagstar was trying to help the borrowers by
 15 decreasing their interest rate, it may have been done to cover up their prior predatory actions.
 16 This may somehow be construed as one event beginning when the Jonson's first came into
 17 contact with Flagstar. The potential fraud in the prior loan lead to their eventual demise.

19 99.

20 Flagstar did not take into consideration the Plaintiff's actual ability to repay this loan using
 21 a Realistic Means Test or other reasonable and prudent indicator or objective standard. In addition,
 22 Defendant did not explain the material terms of the contract to Plaintiff and misrepresented material
 23 terms and after the fact once again misrepresented material facts to Plaintiff in order for Plaintiff to
 24 be deceived into accepting unconscionable terms of said contract, the high monthly payment. It
 25 does not appear that the borrower's debt ratios were taken into consideration. Failure to do so was
 26

1 also a lack of due diligence on the part of Flagstar regarding underwriting standards and the ability
 2 to repay the loan, suggestive that they knew the income was not adequate to approve the loan, had
 3 the lender considered debt ratio, the lender would have had to decline the loan as this is a breach of
 4 the lender's contractual duty to conduct the transaction in good faith and through fair dealing.

5
 6 100.

7 FLAGSTARs enjoyed substantial discretionary power affecting the rights of Plaintiff
 8 during the events alleged in this Complaint. FLAGSTARs were required to exercise such
 9 power in good faith. Defendant then changed the contract and misrepresented terms to the
 10 Plaintiff in order to once again charge more fees and not give to Plaintiff the benefit of the
 11 bargain of the \$1700 a month payment that Plaintiff based its decision to enter into this loan
 12 transaction with Defendant and under which terms were the only terms in which Plaintiff
 13 wished to perform under with Defendant per the new contract terms. These were not the terms
 14 Plaintiff thought they were negotiating for under the original loan nor under the refinance loan
 15 transaction.
 16

17 101.

18 FLAGSTARs willfully breached their implied covenant of good faith and fair dealing
 19 with Plaintiff when FLAGSTAR:

20 I. Willfully withheld numerous disclosures;

21 II. Willfully withheld the potential increase in payment and repeatedly promised the
 22 payment should be around \$1700 with an interest rate between 3% and 4%;

23 III. Willfully placed Plaintiffs in a loan that they did not qualify for, could not afford,
 24 and subjected them to further financial detriment, while providing FLAGSTAR with
 25 financial benefits they would not have otherwise enjoyed.
 26

102.

As a result of FLAGSTAR's breach of this covenant, Plaintiffs have suffered injury in overpayments of \$52,051.50 and has caused Plaintiffs the threat of loss of their home and loss of credit. Plaintiffs have incurred and continue to incur legal fees, including attorney fees and costs, as well as expenses to right this wrong.

103.

FLAGSTAR's actions in this matter have been willful, knowing, malicious, fraudulent and oppressive, entitling Plaintiff to punitive damages in an amount appropriate to punish FLAGSTAR and to deter others from engaging in the same behavior.

WHEREFORE, Plaintiff prays for relief as set forth below.

PLAINTIFF'S NINTH CLAIM FOR RELIEF
PREDATORY LENDING

104.

Plaintiffs re-allege and incorporate by reference all preceding paragraphs as though fully set forth herein.

105.

Upon review of the closing documentation accompanying the execution of the Promissory Note and Deed of Trust, Plaintiff has identified the following predatory lending violations.

106.

Defendant OWNIT has engaged in the following acts which constitute predatory lending practices and violations of the Unfair Trade Practices Act:

- A. LTV ratio exceeded 80%
- B. DTI ratio exceeded 60%, far in excess of the 28%/36% provided for in interagency guidelines.
- C. Interest rate exceeded more than 2 points above margin.

1 D. Deceptive and fraudulent practices throughout the duration of the transaction in

2 E. violation of the Unfair Trade Practices Act.

3 107.

4 As a direct result of Defendant s actions in connection with the loan, Plaintiff
5 has been damaged in an amount to be proven at trial, but not less than \$15,000.00 plus statutory
6 fees.
7

8 VII. PLAINTIFF'S TENTH CLAIM FOR RELIEF
9 IMPROPER TRANSFER

10 108.

11 Plaintiff re-alleges and incorporates by reference all proceeding paragraphs fully set
12 forth herein.

13 109.

14 When plaintiff s note and deed of trust were created defendant MERS was named as the
15 "beneficiary" in the deed of trust. Plaintiffs are informed and believe that they are on a ledge,
16 that defendant MERS lacks authority under its corporate charter to foreclose a mortgage, or to
17 own or transfer an interest in this particular mortgage because MERS charter limits MERS
18 powers and duties to functioning as an electronic registration system for certain types of
19 securities. This loan appears to have been sold to Freddie Mac on January 13, 2010.
20

21 110.

22 The assignment doesn't occur until nearly two years later or late November of 2011. A
23 search of this MIN# revealed the "Servicer" as Flagstar and the "Investor" as Freddie Mac.
24 This is evidence that the loan was on the books of Freddie Mac even after the purported
25 assignment to Flagstar who is now acting as the "Servicer". Moreover, if the loan was
26 indeed purchased by Freddie Mac, it was securitized by this "Gov't Sponsored Entity" (GSE.) A

1 search in Bloomberg identified approximately 57 potential "Freddie Mac REMIC" trusts to
2 which the subject loan could have been pledged around the time of origination.
3

4 111.

5 If the loan was indeed purchased by Freddie Mac, it was securitized by this
6 "Government Sponsored Entity" (GSE.) A search in Bloomberg identified approximately 57
7 potential "Freddie Mac REMIC" trusts to which the subject loan could have been pledged
8 around the time of origination (Bloomberg Exhibit A), attached as Exhibit 03.

9 Each Freddie Mac trust has a "Pooling & Servicing Agreement" and Prospectus must be
10 obtained in formal discovery.
11

12 112.

13 Plaintiffs are informed and believe, and their on a ledge, that in order to conduct a
14 foreclosure action, a person or entity must have standing.

15 113.

16 The Note in this action identifies the entity to whom it was payable, the original lender,
17 as Flagstar Bank, F.S.B. Therefore, the Note herein cannot be transferred unless it is endorsed.
18 There is a "blank endorsement" on a separate page of Defense exhibit. If this was placed on the
19 back page of the so-called original note, it is suspicious. Endorsements are to be placed on the
20 signature page of the note if there is room. There appears to have been plenty of space to affix
21 the endorsement on the signature page. This adds credence to the document being altered. The
22 Note itself does not establish that that endorsement was made properly nor are there any other
23 notices which establish that the original lender endorsed and sold the note to another party.
24

25 114.
26

1 Furthermore, in so far as the party to the securitization and transfer of the plaintiffs note
 2 and deed of trust base their claim that the note was not transferred to Freddie Mac or Flagstar
 3 properly as it is well established federal and state law that the assignment of a deed of trust
 4 does not automatically assign the underlying promissory note and the right to be paid and the
 5 security interest is incident to perfect the transfer of mortgage papers as collateral for a debt,
 6 the owner should deliver the note to the transferee without transfer, the sale of the note is
 7 invalid as a fraudulent conveyance, or as unperfected. The note herein specifically identifies the
 8 party to whom it is payable, to it, Flagstar Bank, F.S.B. and the note, therefore, cannot be
 9 transferred unless it is endorsed. As mentioned above the Note appears to be a forgery and not
 10 the original and the endorsements on Defendants attached Note exhibit are suspicious at best
 11 and lead to the conclusion that Flagstar had possibly even placed this note in some sort of trust
 12 furthering complicating the chain of title issue regarding this Deed of Trust and Note.
 13

14 115.

15 Defendants, and each of them, cannot produce any evidence that the note has been
 16 transferred; therefore, defendant MERS could only transfer whatever interest it had in the deed
 17 of trust. In addition there was no designated Trustee in the Deed of Trust either to transfer it as
 18 well. The promissory note and deed of trust are inseparable; an assignment of the note carries
 19 the mortgage (i.e., deed of trust) with it, while an assignment of the deed of trust alone is a
 20 nullity. Therefore, if one party receives a note and another party receives the deed of trust, as in
 21 this case, the holder of the note prevails regardless of the order in which the interest was
 22 transferred.
 23

24 116.

1 Defendant MERS has failed to submit documents authorizing MERS, as beneficiary for
 2 the original lender, to assign the subject mortgage. In the instant action, MERS, as a mere
 3 beneficiary for the original lender, not only lacks authority to assign the mortgage, but cannot
 4 demonstrate that the original mortgage holder had knowledge or ascent to the assignment by
 5 MERS of the original Promissory Note. Any attempt to transfer the beneficial interest of a trust
 6 deed without actual ownership of the underlying note, is void. Therefore, Defendant, MERS,
 7 cannot establish that it is entitled to assert a claim in this case. For that reason as well as other
 8 reason set forth below, MERS cannot transfer an interest in real property and cannot recover
 9 anything from the Plaintiffs.
 10

11 117.

12 The Defendants and each of them through actions alleged above have illegally
 13 commenced foreclosure under the note on the home, supported by false or fraudulent
 14 documents. Said unlawful foreclosure action has caused and continues to cause plaintiffs great
 15 harm and irreparable injury and that real property is unique.
 16

17 118.

18 The wrongful conduct of the defendants, unless restrained or enjoined by an order of
 19 this court, will continue to cause great and irreparable harm to the plaintiffs. Plaintiffs will not
 20 have the beneficial use or enjoyment of their home and will lose their home. Plaintiffs have no
 21 other plain, speedy or adequate remedy and the injunctive relief prayed for below is necessary
 22 and appropriate at this time to prevent irreparable loss to the plaintiffs. Plaintiffs have suffered
 23 and will continue to suffer in the future unless defendant's wrongful conduct is restrained and
 24 enjoined because real property is inherently unique and will be impossible for the plaintiffs to
 25 determine the precise amount of damage they will suffer.
 26

1 PLAINIFF'S ELEVENTH CLAIM FOR RELIEF
2 UNFAIR AND DECEPTIVE BUSINESS ACT PRACTICES (UDAP)

3 119.

4 Plaintiffs re-allege and incorporate by reference all preceding paragraphs as though
5 fully set forth herein.

6 120.

7 Flagstar does not have authority to initiate foreclosure against Plaintiff's Property under
8 said Trust Deed and Note. It appears that Defendants violated State law and Federal law as a
9 result of the way in which Defendant's attempted to foreclose on said Note and Trust Deed.
10 Flagstar and Northwest Trustee Services, Inc. initiated a foreclosure action that it never had
11 proper authority to initiate. Defendants have gone as far as to introduce a forged original
12 Promissory Note into evidence attached to its Motion to Dismiss as an Exhibit in order to
13 further perpetuate its goal of wrongfully foreclosing on Plaintiff in this action.
14

15 121.

16 By reason of Defendants fraudulent, deceptive, unfair, and other wrongful conduct
17 as herein alleged, said Defendants have violated Revised Code of Washington 19.86.093 by
18 consummating an unlawful, unfair, and fraudulent business practice, designed to deprive
19 Plaintiff of their home, equity, as well as their past and future investment.
20

21 122.

22 By reason of the foregoing, Plaintiffs have suffered and continues to suffer damages in
23 a sum which is, as yet unascertained.

24 WHEREFORE, Plaintiff prays for relief as set forth below.

25 PLAINIFF'S ELEVENTH CLAIM FOR RELIEF
26 UNCONSCIONABILITY

123.

Plaintiffs re-allege and incorporate by reference all preceding paragraphs as though fully set forth herein.

124.

If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result. In this case, we would ask the court to refuse to allow the Defendants to invoke the power of sale clause in the Deed of Trust because of the Claims alleged herein.

125.

When it is claimed or appears to the court that the contract or any clause thereof may be unconscionable the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose and effect to aid the court in making the determination.

126.

Here, based on the deception, unfair bargaining position, lack of adherence to the Regulations, submitting a forged promissory note into evidence and contract fraudulent inducement and other laws that the Defendants were required to follow; coupled with the windfall that the Defendants reaped financially from their predatory practices and fraudulent practices upon Plaintiff, the court may find that the loan agreement and trust deed are unconscionable and of no force or effect.

///

///

1 WHEREFORE, Plaintiff prays for restitution and relief as set forth below.

2
3 RIGHT TO AMEND

4 Plaintiff reserves the right to Amend this Complaint with new Claims and new Parties
5 as is dictated by the evidence.

6 WHEREFORE, Plaintiff will ask for the following for each Claim for Relief sustained:

- 7 1. Plaintiff's Claims Invalidating the Sale Request the following Relief:
8 i. For Declaratory Judgment voiding, invalidating and setting aside any
9 attempt to initiate a foreclosure action; and
10 ii. For Injunctive relief barring Defendants' from seeking the right to
11 foreclose and otherwise seeking to dispossess Plaintiff of the property.
12 2. For Compensatory Damages in an amount to be determined by proof at trial.
13 3. For Special Damages in an amount to be determined by proof at trial.
14 4. For General Damages in an amount to be determined by proof at trial.
15 5. Awarding Plaintiff its reasonable Attorney Fees and Costs of this Action.
16 6. For a judgment either reforming or rescinding the Note and Deed of Trust and
17 setting forth terms of restitution.
18 7. For any prejudgment or other interest according to law.
19 8. For whatever relief the Court deems just and equitable.

20 DATED Thursday, January 03, 2013.

21 THE COCHRAN LAW FIRM

22 By: /s/ John A. Cochran

23 John A. Cochran, WSBA No. 38909

24 Attorney for Plaintiff
25
26